

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

Crl.Rev.Pet.No. 1128 of 1999()

MC.35/1996 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA

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REVN. PETITIONER:

BALKKEESA, POOVAKKATTU MANNIL HOUSE,
VALAMCHUZH MURI,
PATHANAMTHITTA VILLAGE,
KOZHENCHERRY TALUK

BY ADV. SRI.S.MUHAMMED HANEEFF

RESPONDENTS:

1. NAZARUDEEN, APACHALIYATHU HOUSE,
PETTAH MURI, PATHANAMTHITTA VILLAGE,
KOZHENCHERRY TALUK.
2. MEERASAHIB, APACHALIYATHU HOUSE,
PETTAH MURI,
PATHANAMTHITTA VILLAGE,
KOZHENCHERRY TALUK.

BY ADV. SRI.MVS.NAMBOOTHIRY
PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 20/08/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.R.P.No.1128 of 1999(B)
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Dated this the 20th day of August, 2007

O R D E R

The revision petitioner/wife has disputed the correctness of the order of the court below dismissing her application under Section 3(1) (a), (c) & (d) of the Muslim Women (Protection of Rights on Divorce) Act, 1986. It is her case that the marriage was solemnised on 17/01/1993 as per the customary rites of the community and a child was born on 19/11/1994 and, subsequently, due to ill treatment of the husband she was staying apart. It is alleged that various amounts were paid to him at the time of marriage and subsequent to the marriage and that the gold ornaments were misappropriated. When the above were demanded back, it was represented that the same will be returned on executing a document styled as divorce agreement which was executed at the Juma-at, Pathanamthitta, on 17/05/1996. After signing the divorce agreement it is alleged that he has not returned the properties as per the agreement. Hence, a sum of Rs.50,000/- is claimed to be paid towards

maintenance and 36.900 gms of gold or its value of Rs.20,000/- which was to be given to the petitioner as Mahr and another 51 sovereigns or Rs.2,00,000/- towards the value of the ornaments misappropriated by the husband. The respondent/husband and his father, who are respondents 1 and 2 respectively, have disputed all the allegations and contended that as per the agreement executed on 17/05/1996, the entire amounts due have been paid and nothing more is liable to be paid.

2. The evidence adduced in the matter consisted of the testimony of PWs.1 to 3, CWs.1 to 3 and Exts.D1 to D6. The trial court after adducing the evidence has held that the execution of Ext.D1 agreement has been admitted and hence, as per the terms of Ext.D1 agreement, the entire amounts have been paid. The trial court upheld the above contention relying on the decision of this Court in **Mytheen v.Saphiya [1993 (2) KLT 322]**.

3. It is the contention of the revision petitioner that even if it is conceded that Ext.D1 agreement has been executed, the amounts due, as per the Muslim Women (Protection of Rights on Divorce) Act, has to be paid. The counsel has relied on the decision in **Iqbal Bano v. State of Uttar Pradesh [2007(3) KLT 63 (SC)]**, in support of his contention that each of the items to be provided to the wife as per Section 3 of the Act should be satisfied and paid by the husband and as the agreement did not contain any provision for the same, the execution of the agreement would not disable her to claim further amounts as envisaged under Section 3 of the Act.

4. As contended by the counsel for the respondents, Ext.D1 agreement specifically mentions that 36.900 grams of gold to be paid towards mehr has been received on the date of the agreement. It is also mentioned in the agreement that the ornaments given at the time of marriage is in the custody of the petitioner herself and that there shall be no dispute about it in future. It is also provided in the agreement that a sum of

Rs.60,000/- is paid to the petitioner herein, on the date of the agreement which will include all amounts that have been entrusted with the respondent or to his relatives for the purpose of marriage and also towards whatever amounts of maintenance she is entitled and that the petitioner will not resort to any litigation in future alleging any further rights. The agreement also contains separate provision for the maintenance of the child. It is also pointed out that at the time of evidence it was brought out that the petitioner is employed as an Arabic Teacher and the respondent is running a jeep, and earlier he was working abroad. Counsel for the respondent has also relied on **Majitha Beevi v.Yakoob [1999 (1) KLT 796]** to stress the point that if properties etc. are provided earlier to the divorced wife the same is sufficient to satisfy the requirements of reasonable and fair provision as provided under Section 3(1) (a) of the Act, and that the divorced woman is not entitled to claim reasonable and fair provision again.

In the circumstances, I find that Rs.60,000/- paid on 17/05/1996 cannot be said to be a meager sum so as to deprive the petitioner of her rights as per the Muslim Women (Protection of Rights on Divorce) Act in view of the income of the respondent also. I find no merits in this matter. The criminal revision petition is, therefore, dismissed.

SD/-

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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O R D E R

20th August, 2007